RECENT CASES

CARRIERS—LIMITATION OF LIABILITY—NOTICE TO PASSENGER.—FRENCH v. MERCHANTS' & MINERS' TRANSP. Co., 85 N. E. 424 (MASS.).—*Held,* that defective eyesight is insufficient to excuse passenger from acquainting herself with the contents of her ticket, but that she must have it read to her.

The more moderate rule appears to be that by mere acceptance of ticket, the purchaser does not bind himself to all terms printed thereon in absence of actual knowledge of them. *Kent v. Baltimore & O. R. Co.,* 10 West. Rep. 459 (Ohio); *Potter v. The Majestic,* 56 Fed. 244. In like manner, the burden of proof of passenger's knowledge rests upon the railroad, *Baltimore & O. R. Co. v. Harris,* 12 Wall. 65; so that where a passenger is unable to read and no explanation is made by agent of railroad, the terms on ticket are not binding. *Mauritz v. N. Y., L. E. & W. R. Co.,* 23 Fed. 765. The harsher rule is, that a passenger is bound by conditions whether read or not. *Boylan v. Hot Springs R. Co.,* 132 U. S. 146; and likewise by the legal effect, whether known or not. *Gulf C. & S. F. Ry. Co. v. Riney,* 92 S. W. 54 (Tex.). The most reasonable rule, however, seems to be that a passenger should be bound only where it is carelessness not to have read the terms of the ticket or to have had them read to him. *Louisville, N. A. & C. Ry. Co. v. Nicholai,* 42 Ind. App. 119; *Aplington v. Pullman Co.,* 97 N. Y. S. 329.

CONTEMPT—CRIMINAL INTENT—ESSENTIALITY.—STATE v. HOWELL, 69 ATL. 1057 (CONN.).—A newspaper editor and manager was not aware of the publication in his paper of certain articles tending to obstruct the administration of justice. *Held,* that he could be convicted of contempt of court for such publication.

The offense "contempt of court" has many of the important characteristics of common law crimes. For example, proceedings for contempt have for their purpose the punishment of wrongdoers. *Ex parte Gould,* 99 Cal. 360. And the offense is one which may be pardoned. *State v. Sauvinet,* 24 La. Ann. 119. But inasmuch as the offense is one against the organs of public justice, and is therefore a special and peculiar public wrong, it has some essential differences from the ordinary common law crimes. For instance: A conviction for contempt of court is no bar to proceedings for criminal conspiracy on the same cause, since the contempt proceeding is a special one. *State v. Ossulaton,* 2 Stra. 1107. And for the same reason, criminal intent, which is so important to the ordinary common law crimes, is not necessary to a conviction for contempt of court. *People v. Wilson,* 114 Mass. 230; *People v. Wilson,* 64 Ill. 195. The case at hand illustrates this difference; and it is one of a very few cases where there has been conviction for constructive acts alone

DAMAGES—MEASURE OF DAMAGES—INJURIES TO THE PERSON.—MORRIS v. ST. PAUL RY. Co., 117 N. W. 500 (MINN.).—In estimating the damages in an action for injuries to a person resulting in a miscarriage it was *held,* that the pain and suffering which the mother would have suffered when

the child was born in the natural course of events, cannot be deducted from the pain and suffering occasioned by the miscarriage, which resulted from the defendant's negligence.

The general rule in these cases undoubtedly is that whether the defendant's conduct be wanton and intentional, or negligent merely, he is liable for the entire consequences of his tortious act, including the woman's suffering and impaired health due to and consequent upon the miscarriage. *Mann Car. Co. v. Dupre,* 54 Fed. 646; *Shartle v. Minneapolis,* 17 Minn. 308. It has been said, however, that the measure of damages is the difference between what actually was suffered as a result of the injury and miscarriage, and the pain and suffering which would have been suffered if the child had been born at the proper time. *Joyce, Dann,* S. 185. The authority for this rule seems to be a statement in *Hawkins v. Front St. Ry. Co.,* 3 Wash. 592, 600, where it is said, "and so we have no doubt that, if Mrs. Hawkins shows impairment of health and suffering growing out of the death and premature birth of her child, which would not have attended its birth at the usual time, . . . respondents can recover for her suffering and impaired health." See also, *Berger v. Railway Co.,* 95 Minn. 84.

FRAUD—DECEPTION CONSTITUTING FRAUD.—ALDRICH V. SCRIBNER, 117 N. W. 581 (MICH.).—*Held,* that if a representation is false in fact, and actually deceives the one to whom it is made, it is actionable fraud, though made in good faith and with every reason to believe it is true. Montgomery, Blair and Ostrander, JJ., *dissenting.*

The general rule is that an action is maintainable for damages sustained from a false representation made by the defendant knowing it to be false, or without belief in its truth, or recklessly without caring whether it be true or false. *Derry v. Peek,* L. R. 14 App. Cas. 327; *Cooper v Schlesinger,* 111 U. S. 148; *Kountze v. Kennedy,* 147 N. Y. 124. There can be no fraud without moral delinquency. *Crowell v. Jackson,* 53 N. J. Law, 656. It is not enough to show that the representations were made through mistake, ignorance, or carelessness, or without reason to believe that they were true. *Mentzer v. Sargeant,* 115 Ia. 527. In Michigan it is immaterial whether the false representation is made innocently or fraudulently, if by its means the party to whom it is made is injured. *Totten v. Burhans,* 91 Mich. 495. False statements have been held actionable if they were made without reasonable grounds to believe them to be true. *Trimble v. Reid,* 97 Ky. 713; *Rowell v. Chase,* 61 N. H. 135; *Ramsay v. Wallace,* 100 N. C. 75. If the defendant stated as of his own knowledge, material facts susceptible of knowledge which were false, although he did not know them to be false, that he believed them to be true is no defence. *Litchfield v. Hutchinson,* 117 Mass. 195; and this Mass. doctrine has been followed in Indiana, Minnesota, Wisconsin, New Hampshire and New Jersey.

LANDLORD AND TENANT—WASTE—LIABILITY OF LESSEE—ACTS OF STRANGER.—RIMOLDI V. HUDSON GUILD, 110 N. Y. SUPP. 881. *Held,* that removal by a stranger of things fixed to the freehold without knowledge of the lessee does not render the latter liable for voluntary waste.

The courts seem to differ on this question, but still the decided weight